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Situation of human rights in Belarus

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in Belarus, Miklós Haraszti, submitted in accordance with Human Rights Council resolution 26/25.

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Report of the Special Rapporteur on the situation of human rights in Belarus

Summary

The present report is submitted by the Special Rapporteur on the situation of human rights in Belarus in accordance with Human Rights Council resolution 26/25, focusing on the situation of freedom of expression in Belarus. It contains the main findings of the Special Rapporteur and provides recommendations aimed to support Belarus in complying with stipulations regarding freedom of expression in its national Constitution and its international obligations.

The findings of the report show that for over two decades, the established system of media governance has effectively stifled the exercise of the right to freedom of opinion and information. Media pluralism is absent; Belarus is the only country in Europe with no privately owned nationwide broadcasting outlets. The Government is the direct regulator of all types of media. Media independence is rendered impossible through a permission-based system of registration and arbitrary rules regarding the revoking of licences. Critical expression and fact-finding are curtailed by the criminalization of content that is deemed "harmful for the State", by criminal defamation and insult laws that protect public officials and the President in particular from public scrutiny and by extremism laws that ban reporting on political or societal conflicts. The system-wide violations of the right to freedom of expression are further aggravated by the systematic harassment of journalists who challenge the denial of their rights. Especially worrying in this regard is the adoption in December 2014 of amendments to the law on mass media, which have taken on the last vestiges of free expression, the Internet. Belarus approaches its next presidential elections deprived of the media rights necessary for an informed, free and fair election.

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I. Introduction

A. Background

1. The present report was mandated by the Human Rights Council in its resolution 26/25 and focuses on the situation in Belarus with regard to the right to freedom of expression.

2. The mandate of the Special Rapporteur on the situation of human rights in Belarus was established by the Council in its resolution 20/13 in 2012, when the human rights situation had further deteriorated following the violations committed in the aftermath of the 2010 presidential elections. Key political figures and hundreds of individuals were arrested and sentenced by courts to administrative arrests and fines. Seven of the 10 presidential candidates were detained and four of them sentenced to prison for "mass disturbances".

3. Since the establishment of his mandate, the Special Rapporteur has repeatedly noted that the system of governance — decrees, legislation, policy and practice — was impeding the realization of the constitutional guarantees for the protection of human rights for everyone living in Belarus. No significant progress or political will were discernible in addressing the systemic and systematic disrespect for human rights. In fact, his findings have brought to light a deterioration in the overall situation of human rights in Belarus, which has been documented in his annual reports to the Human Rights Council.

4. It is against this backdrop that the Special Rapporteur presented his first thematic report to the General Assembly, which was focused on human rights in electoral processes in Belarus (A/68/276). In his report, the Special Rapporteur explored the patterns of systemic human rights violations in the context of elections in Belarus, none of which since 1994 had been free or fair (ibid., para. 13).[1]

5. In his second report, presented to the General Assembly at its sixty-ninth session (A/69/307), the Special Rapporteur continued to examine other essential conditions for the effective exercise of the right to vote, namely the situation of civil society and human rights defenders in Belarus, as well as the prevailing environment for the exercise of the rights to freedom of association and assembly.

6. The focus of the present report is on freedom of expression as another central pillar of a democratic society and guarantor of free and fair electoral processes, which is especially crucial in this election year.

7. The findings in the present report bring to light a pattern similar to the Special Rapporteur's findings with regard to the freedoms of association and peaceful assembly (see A/69/307). Media governance in Belarus consists of a three-layer, administrative filter applied to reduce the enjoyment of the right to freedom expression: an overly restrictive permission-based system; a systematic denial of requests for registration and permissions; and punitive sanctioning of activities for which permissions have been refused. Especially worrying in this regard is the adoption in December 2014 of amendments to the law on mass media, which have taken on the last vestiges of free expression, the Internet. The constitutional right to

[1] Refers to elections observed by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, which does not monitor local elections.

freedom of expression is further diminished by the application of criminal defamation and extremism laws; routine harassment of media professionals, journalists and ordinary citizens attempting to make use of that right through administrative sanctions; arrests and detentions, including for unsanctioned activities; and bogus criminalization based on unrelated charges, such as hooliganism.

8. The respect of the right to freedom of expression in Belarus can be judged not only by the number of people confronting the judicial system or the number of independent media outlets closed down or journalists persecuted. These cases are but the tip of the iceberg, occurring when citizens challenge the system of restrictions put into place over two decades ago by the incumbent authorities in Belarus. This entrenched form of governance effectively stifles all particular freedoms that underlie the broader constitutional right of freedom of expression. For generations now, an atmosphere of fear and self-censorship has been created in which citizens refrain from taking part in public debates — in the same way as citizens refrain from making use of the right to organize or to assemble. Any attempt to express a critical opinion is retaliated against. The right to know - that is, access to information of public importance — is systematically denied. Media diversity is non-existent; restricting media pluralism, cutting the free flow of information and outlawing differing opinions and ideas are all essential tools used to curtail all other freedoms, and in particular that of free and fair elections.

B. Methodology

9. In preparing the present report, the Special Rapporteur was guided by the principles of independence, objectivity, impartiality and cooperation with all relevant stakeholders, including the Government of Belarus.

10. The Special Rapporteur has repeatedly contacted the Government since his nomination but has not received any replies. The latest communication was sent following the renewal of his mandate in July 2015, reiterating his request to visit the country and engage in dialogue with the authorities and other stakeholders. Regrettably, the Government has repeatedly refused to recognize the Special Rapporteur's mandate and has failed to grant access to the country.

11. Nevertheless, the Special Rapporteur was able to gather information from primary and secondary sources, including public analytical reports by Belarusian and international civil society groups, media associations and professionals and human rights defenders, research papers, media reports, individual communications and publically available Government statements and reports.

12. The Special Rapporteur is grateful for the cooperation received from many stakeholders living in Belarus. In the present report, he refers to cases that are emblematic of the nature of the human rights violations in Belarus. They do not, however, reflect the full list of allegations submitted to the Special Rapporteur.

II. International human rights framework

13. Basic provisions in international human rights law protect the right to freedom of expression, both in its broad sense and in its particular aspects.

14. Article 19 of the Universal Declaration of Human Rights lays down the foundations of several specific freedoms inherently encompassed in the general right to freedom of expression. By stipulating everyone's right to freedom of opinion, along with the right to express those opinions without interference, it unambiguously provides for the fearless exercise of an individual's right to speak out, that is, the ability to engage in debate on social issues without undue limitations as to what can be said in public. By explicitly including in this right the freedom to seek, receive and impart information, it pins down the citizens' "right to know", that is, their freedom of fact-finding and their free access to governmental data of public importance. Beyond opinions and factual information, article 19 also provides for the freedom of seeking, receiving and imparting of ideas, laying thereby the foundations for artistic and scientific freedoms. Finally, by granting the exercise of all the above liberties through any media and also regardless of frontiers, article 19 defines two fundamental media rights that are indispensable for the exercise of the freedom of expression: media pluralism, or "the right to choose", and the media's right to traverse national boundaries, the most modern embodiment of which is the "right to connect" globally through the diverse media types hosted by the Internet or other means of communication.

15. These freedoms are further spelled out in article 19 of the International Covenant on Civil and Political Rights. Article 19, together with articles 21, 22 and 25 of the Covenant, lay the foundations for the exercise of public freedoms in a society.

16. The fundamental role of freedom of expression as a core element of democracy and indispensable for advancing development goals, both in its own right and as an essential tool for the defence of all other rights, has been repeatedly stressed. Freedom of opinion and expression are the cornerstones of every free and democratic society and a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights (Human Rights Committee, general comment No. 34, para. 3).

17. For people to communicate meaningfully about issues of public importance they must be able to come together publicly and it is for this reason that the enjoyment of freedom of expression is dependent on the extent to which freedoms of assembly and association are guaranteed. The relationship between these freedoms is one of interdependence, in that the exercise of freedoms of association and assembly may be seriously affected by the extent to which freedom of expression is guaranteed; neither are these freedoms separable from the rights guaranteeing human development and social progress.[2]

18. As stipulated in article 21, paragraph 3, of the Universal Declaration of Human Rights the will of the people is to be the basis of the authority of government. The expression of the people's will cannot be limited to what the Declaration calls "periodic and genuine elections", but also entails the ability of the people to participate in public life.

19. General comment No. 34 of the Human Rights Committee makes explicit linkages between articles 19, 21, 22 and 25, stating that freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association, and

[2] See, for example, the report of the Secretary-General on the post-2015 sustainable development agenda (A/69/700), para. 78.

the exercise of the right to vote. The Committee moreover commented that political participation rights would be meaningless without the exchange of ideas (see general comment No. 25).

20. In the context of elections and political communications, the Committee stressed that the full enjoyment of the electoral rights laid down in article 25 depends on the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives, just as it requires the free exercise of the rights to peaceful assembly and association, among other rights (ibid., para. 25).

21. Political parties have the freedom to choose and pursue ideologies, even if these are unpopular with the authorities or the public in general, including the ability to call for a boycott of elections, without fearing retaliation for doing so. The right of political parties to freedom of expression and opinion, particularly through electoral campaigns, including the right to seek, receive and impart information is, as such, essential to the integrity of elections (A/68/299, para. 38).

22. The circumstances under which the right to freedom of expression can be restricted, which should be exceptional and limited, as well as the nature of such restrictions, are clearly laid out in article 19, paragraph 3, of the International Covenant on Civil and Political Rights and have repeatedly been stressed in international human rights law and by international and regional human rights mechanisms.[3] Paragraph 3 lays down specific conditions and it is only subject to those conditions that restrictions may be imposed. Furthermore, as the Human Rights Committee has recalled, the relation between right and restriction and between norm and exception must not be reversed; and restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated (General comment No. 34, paras. 21 and 22; see also general comments Nos. 22 and 27). Paragraph 3 of the Covenant may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.[4]

23. The Human Rights Council, in its resolution 12/16, reiterated that restrictions on the following were not consistent with article 19, paragraph 3, of the Covenant: (a) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups; (b) the free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship; and (c) access to or use of information and communication technologies, including radio, television and the Internet.

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[3] See, for example, the "Joint declaration on universality and the right to freedom of expression", adopted on 6 May 2014 by the United Nations Special Rapporteur on freedom of opinion and expression, the Organization for Security and Cooperation in Europe Representative on Freedom of the Media, the Organization of American States Special Rapporteur for Freedom of Expression and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information. Available from www.osce.org/fom/118298?download=true.

[4] See Human Rights Committee, communication No. 458/1991, *Mukong v. Cameroon*.

III. National legislation and practice

A. Overview

24. Belarus ranked 157th out of 180 countries in the Reporters Without Borders 2015 world press freedom index,[5] and 195th out of 197 in the 2015 press freedom rankings by Freedom House.[6]

25. Despite guarantees laid down in article 34 of the Constitution of Belarus and international obligations taken on by Belarus in that regard, national laws and bylaws severely restrict freedom of expression in all its major aspects: media pluralism and independence; access to information and unimpeded fact-finding; unhindered debate of public issues; online freedoms; and artistic freedoms.

26. While television remains the main source of information for the public, audiovisual media pluralism is effectively denied through the licensing regulations, resulting in a State-owned broadcasting scene. Of the 262 registered television and radio stations, 178 are State-owned.[7] Four of the six nationwide television channels are directly State-owned and the other two are run by State-owned joint stock companies.[8] The right to choose between diverse outlets as consumers, or to establish such outlets as entrepreneurs, is limited to media genres outside television.

27. Diversity of print media is limited through its subordination to a permission-based process of registration which vests the authorities with broad discretionary powers. The Ministry of Information exercises this power through a procedure of registration based on permissions and sanctions. The constantly changing requirements are complex, awkward and unclear; the decision-making process is not transparent; and the regulations purposefully leave room for arbitrary, selective and politicized implementation.

28. The overwhelming majority of print media are privately owned[9] and most of them are not news providers but mainly advertising or entertainment ventures. According to the Belarusian Association of Journalists, in fact less than 30 print media outlets, including regional ones, cover political or social issues with actual news journalism.[10]

29. The right to freely seek, receive and impart information is restricted not only by the lack of regulations obliging the authorities to disclose data of public importance proactively or on demand, but also by the so-called accreditation rules, which prevent reporting on potentially sensitive topics. Foreign correspondents face additional obstacles in getting accredited and thus to report from the country. Freelance journalists, as well as those working for unregistered media, are refused accreditation, which effectively bans them from working and exposes them to fines and sanctions.

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[5] https://index.rsf.org/#!/index-details/BLR.

[6] https://freedomhouse.org/report/freedom-press-2015/2015-press-freedom-rankings.

[7] www.mininform.gov.by/ru/deyatelnost-ru/.

[8] National State television and radio company (www.tvr.by/eng/televidenie/).

[9] According to the Ministry of Information (www.mininform.gov.by/ru/stat-ru/): 1,148 out of 1,577, as at 1 August 2015.

[10] Index on Censorship, "Belarus: time for media reform", policy paper on media freedom in Belarus (February 2014), p. 7. Available at www.indexoncensorship.org/wp-content/uploads/2014/02/IDX_Belarus_ENG_WebRes_FINAL.pdf.

30. Freedom of actual expression is diminished by countless regulatory tactics and policies limiting what can be said in public: criminalizing content deemed as harming the national interest; criminalizing criticism of public officials and the President through defamation laws; and using extremism laws to ban reporting of sensitive political or societal issues. This is backed by a system of punitive measures, including warnings and the right to terminate media outlets by withdrawing registration for "misuse of the media" or improper content. Law enforcement actors arbitrarily use violence against journalists and carry out arbitrary detentions, especially of those who cover public protests.

31. These structural, system-wide violations of the right to freedom of expression effectively encourage self-censorship; marginalize critical issues from the public debate; and offer public officials protection from scrutiny by the media. Additionally, many social and humanitarian issues, as well as topics related to inequality based on gender, religion, sexual orientation and subculture, receive very limited coverage in the mainstream media.[11]

32. The Special Rapporteur is concerned by signals that the situation is liable to deteriorate further following the adoption of amendments to the law on mass media in December 2014, in particular as a result of the new provisions targeting freedom of expression online.

B. Law on mass media

33. The 2008 law on mass media is the key instrument for regulating matters relating to the media. Other media-related laws, for instance criminal provisions on defamation or extremism, have been continually adjusted to this all-encompassing tool of regulation. The law on mass media introduced a number of insurmountably restrictive measures, inter alia, that all media outlets have to apply for government permission to be registered and that activities (i.e. the licence or registration) of a media outlet can be cancelled by a court upon a request from the Ministry of Information or from several other State institutions. The law on mass media provides that the decision of the courts in such cases may be an administrative procedure, meaning the reasoning is not examined on merit but solely against the formalities laid down in the law. The lack of independence of the judiciary, with prosecutors and judges appointed or dismissed by the executive, is an additional element of concern in this regard.

34. In June 2008, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE) provided comments on the draft law,[12] raising a number of concerns, including the burdensome systems of media registration and journalist accreditation and the extension of the Government's power to warn, suspend and close down media outlets. Furthermore, OSCE warned that the law did not offer protection of journalists' confidential sources and opened the possibility for restrictive future regulations on Internet-based media. The OSCE legal review also offered a number of recommendations; however, none of them were taken into account in the adopted version of the law. Despite requests by

[11] As pointed out by panellists participating in the IREX Europe and Eurasia media sustainability index related to Belarus for 2014 (www.irex.org/sites/default/files/u105/EE_MSI_2014_Belarus.pdf).

[12] www.osce.org/fom/49860.

OSCE and associations of media professionals in Belarus to hold open discussions on the draft, it was adopted in June 2008 without consultation with civil society.

35. The amendments adopted in 2014 extended and tightened the Government's jurisdiction over registering, licensing, content-monitoring, warning and suspending of all forms of Internet-based communications. It also created a comprehensive register of distributors of information and obliged online information resources to participate in a permission-based registration process.

36. The new regulation places responsibility on the online resources outlet for any material or comment considered to be harmful to the interests of the State and it authorizes Government institutions to issue warnings over content at the will of the institution. Any outlet receiving two or more warnings from the Ministry of Information may be removed from the database and thus lose the right to distribute information. Additionally, the law restricts foreign ownership in any media outlet to 20 per cent of its capital.

37. The amendments have also had an impact on traditional mass media and the freedom of artistic expression. Publishing houses and distributors of printed media, including bookshops, must now register with the Ministry of Information, with all the restrictive consequences associated with that process.

C. Registration and licensing

38. Registration and licensing are key challenges in the law on mass media that hamper media pluralism and independence.

39. Regarding the print press, only a notification-based registration procedure is compatible with international standards, in which a print media outlet informs the authorities that it is starting its business and is then automatically entered into a national register if it provided the minimally necessary data based on a normative list in the law.

40. Articles 11-16 of the law on mass media regulate a permission-based registration and re-registration procedure for the print media, the need for which has repeatedly aroused serious criticism.[13]

41. Article 13 of the law on mass media provides that outlets publishing printed publications with a circulation of more than 299 copies are obliged to register. This entails first registering an editorial board as a legal entity, with a long list of required information, including details about the would-be editor-in-chief, who must have a degree in journalism and at least five years of editing experience. Once this registration is granted, applicants are required to list numerous details about the outlet, including the proposed specialization (topics to be covered), frequency and area of distribution and sources of funding. The law is not normative and allows for broad discretionary powers of the registering authority.

42. Media outlets producing small publications with a circulation of less than 299 copies do not have to register as media outlets, but still have to register as legal entities, which implies renting offices, employing editors and paying taxes, even if the publications are not issued on a regular basis. In April 2014, a court in Smarhon

[13] www.osce.org/fom/24436.

(Grodno region) imposed a fine equivalent to €216 on Vladimir Shulnitsikyi for distributing a small-circulation human rights bulletin, and a court in Vitebsk fined Georgyi Stankevich the equivalent of €500, the maximum penalty foreseen under article 22.9 (2) of the code of administrative procedures, for distributing a bulletin. The Human Rights Committee has established that the requirement for registration of a media outlet with a print run of only 200 copies constituted a violation of freedom of expression.[14]

43. Additional restrictions not provided for in the law were imposed by the Ministry of Information in its decrees Nos. 17 and 18 in October 2009. Even though a company that is termed a "unitary enterprise" can be registered at its founder's home address, the Ministry of Information reportedly in application of these decrees demands from the editorial boards of media outlets that are unitary enterprises to have separate offices in non-residential premises.[15]

44. Article 51 of the law on mass media allows withdrawal of registration of any media outlet after two warnings (or, in some cases, even after one) issued by the Ministry of Information or a prosecutor's office and a few other State entities, for any alleged infringement, even a minor one, which effectively amounts to closing the outlet down.

45. The registration system efficiently filters out any media start-up considered undesirable by the authorities. In the period 2010-2012, the Ministry of Information refused 105 applications for new media outlets and issued 180 official warnings.[16] Since then, however, the number of refusals of registration has decreased, owing also to the diminished number of requests for registration. Only two new non-State publications were registered in 2015.[17]

46. Re-registration is an additional obligation imposed on the print media. Re-registration is required following a decision to suspend the activities of a print media outlet, but also if changes occur to the founding data, even minor ones such as the name of the publication. To re-register requires repeating the whole registration process, which can take months, during which time the outlet is not allowed to publish. Following a presidential decree in June 2005 which banned the use of the word "Belarusian" in non-official publications, several independent newspapers were forced to re-register and, unable to comply with the process, went out of existence.

47. Applying for a broadcasting licence is an even more complicated procedure. Licensing and frequency allocation are direct Government functions.[18] Broadcasting licences can be issued with or without a licensing competition. Broadcasting organizations established by a decision of the President or the Council of Ministers are not subjected to a competitive process and are automatically granted frequencies

[14] Human Rights Committee, communication No. 780/1997, *Laptsevich v. Belarus* (CCPR/C/68/D/780/1997).

[15] Index on Censorship, "Belarus: time for media reform", p. 14.

[16] www.belta.by/society/view/mininform-belarusi-za-2010-2012-gody-napravil-105-otkazov-v-registratsii-smi-67514-2013.

[17] www.mininform.gov.by/ru/stat-ru/.

[18] Ministry of Information (www.mininform.gov.by/ru/licenzirovanie-ru/).

and licences by the national commission on television and radio broadcasting. All others are subjected to a nominal process of competition.[19]

48. According to information received by the Special Rapporteur, no independent broadcasting channel has received a licence in the past 20 years, while existing independent stations have gone out of business. The very last independent broadcaster, Autoradio FM (Avtoradio), was shut down by the authorities in January 2011 (see also para. 65 below). Registered in 1992, it was the first independent radio station in Belarus following the country's independence.

D. Accreditation

49. A further obstacle to media freedom, especially to the right to seek, receive and impart information and ideas through any media and regardless of frontiers (Universal Declaration of Human Rights, art. 19), is the requirement for accreditation as foreseen in article 1 of the law on mass media, which it defines as "granting to a media journalist the right to cover events organized by State authorities, as well as other events occurring on the territory of the Republic of Belarus." In accordance with the law, State accreditation is mandatory for foreign and national journalists and only those journalists working for State-registered media organizations are recognized.

50. In his comment on the draft law in 2008, the OSCE Representative on Freedom of the Media warned that the law completely changed the legal nature of accreditation of journalists, diverting it from the right of the journalist to get accredited to the power of the accrediting authorities to ban any journalist from working in Belarus.[20]

51. Additionally, freelance journalists are banned from practising journalism altogether, as the law recognizes as journalists only those employed by registered media organizations. In March 2015, the European Federation of Journalists sent a letter to the Minister of Information of Belarus demanding the abolishment of this provision.[21]

52. It should be noted that the Human Rights Committee, in paragraph 44 of its general comment No. 34, adopted a definition of journalism, as "a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere".

53. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression emphasized in that regard that under no circumstances should such conditions be imposed by State authorities as preconditions to practise journalism, given that journalism as a profession can only fulfil its role if it has full guarantees of freedom and protection (A/HRC/20/17, para. 6).

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[19] Belarus, Council of Ministers, decree No. 726 (30 May 2003), concerning ratification of the provision on granting rights to terrestrial television and radio broadcasting on the basis of competition.

[20] www.osce.org/fom/32599.

[21] http://europeanjournalists.org/blog/2015/03/12/belarus-efj-reiterates-appeal-to-lift-ban-on-freelance-journalists/.

54. Registration of foreign media outlets and the accreditation of their journalists is a further barrier. European Radio for Belarus and Radio Liberty were allowed to open offices and accredit a certain number of journalists; however, for many years, repeated requests for official accreditation by Radio Razyja and Belsat TV, both based in Poland, have consistently been refused by the Ministry of Foreign Affairs. On 4 September 2014, the Supreme Court prohibited Belsat TV from using the trademark "Belsat" when broadcasting to the territory of Belarus and on the channel website (A/HRC/29/43, para. 84).

55. Journalists are routinely prevented from working, or are sanctioned, based on the fact that they are not accredited.[22] In 2014, the Prosecutor's Office continued to issue warnings to Belarusian journalists working for media registered in a foreign country on the grounds that they had worked without accreditation, including Belsat TV journalists Ales Zalevski and Alexander Denisov, and Andrey Meleshko, a freelance journalist for Radio Razyja (A/69/307, para. 39). On 2 December 2014, Andrei Myaleshka from Grodno was fined 6 million Belarusian roubles, the third fine in 2014 for the "illegal exercise of journalism in Belarus", for his work with Radio Razyja.[23] On 25 September 2014, Maryna Malchanava was fined in Bobruisk for the publication of an article on the website of Belsat TV. On 16 September 2014, police inspected the apartment of journalist Ales Burakou and seized his computer equipment, reportedly following the publication of an article on the website of Deutsche Welle (A/HRC/29/43, para. 85).

56. On 2 July 2015, the Rahačoŭ District Court found freelance journalists Kastus Zhukouski and Natallia Kryvashei guilty of illegally producing media products and fined them 6.3 million roubles each for interviewing people on the street near a shop in Rahačoŭ and producing a video report shown on 14 May on Belsat TV with the title "Sour taste of the crisis. Why does Rahačoŭ condensed milk remain in the warehouses?"[24] This was the seventh court case for Mr. Zhukouski and the fourth for Ms. Kryvashei in 2015.

57. The Belarusian Association of Journalists has noted an increasing number of such penalties since the beginning of 2015. In 2014, 10 independent journalists were officially warned and fined for their affiliation with media outlets that were not officially registered.[25] In the first seven months of 2015 alone, 26 fines were handed down (as at 28 July 2015), with some journalists being fined repeatedly, up to six times, such as in the case of freelance journalist and cameraman Kastus Zhukouski.[26] The Special Rapporteur on the situation of human rights in Belarus is concerned at this increased harassment of journalists through administrative sanctions.

58. In June 2014, the OSCE Representative on Freedom of the Media expressed concern at the increasing number of fines imposed on Belarusian journalists for work without accreditation, stating that: "Accreditation should not be a licence to work and the lack of it should not restrict journalists in their ability to work and express themselves freely" and that "All journalists should have the same

[22] Belarus, law on mass media (http://law.by/main.aspx?guid=3871&p0=H10800427e).
[23] Civic Belarus, "The price of freedom of speech", 11 December 2014.
[24] http://spring96.org/en/news/78267.
[25] http://baj.by/sites/default/files/monitoring_pdf/2362014_mass_media_in_belarus_ru.pdf.
[26] http://baj.by/en/node/28323.

professional rights as journalists employed with registered media outlets, including the right to seek and disseminate information".[27]

59. Access to information is further barred by laws on State secrets and State service, containing loosely defined provisions on how to define a secret. More than 60 different State bodies and institutions have the right to classify information as a State secret, including the Ministry of Information, the Ministry of Culture, the Ministry of Education, the State television and radio company and regional authorities.

60. This and other vague concepts, such as the requirement for compliance with reality (article 49 of the law on mass media), considerations of national interests, criminalization even of obtaining leaked information, criminal defamation laws and the application of anti-extremism laws, all further limit the scope for independent reporting, investigative journalism and sharing of information.

E. Defamation

61. Freedom of expression, and most notably the right to hold opinions without interference (Universal Declaration of Human Rights, art. 19), is curtailed in Belarus by the criminalization of opinion. Six articles of the criminal code provide for criminal liability for defamation: article 188, Libel; article 189, Insult; article 367, Libel in relation to the President of the Republic of Belarus; article 368, Insulting the President of the Republic of Belarus; article 369, Insulting the representative of the authorities; and article 369, Discrediting the Republic of Belarus.

62. International human rights mechanisms have repeatedly called for the decriminalization of defamation and libel and the transferring of such offences to the civil law domain. As noted by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, criminal defamation laws have a disproportionately chilling effect on free expression, paralyse journalistic investigation and generate an atmosphere of intimidation, which constitutes a form of judicial harassment. Criminal prosecution for defamation inevitably becomes a mechanism of political censorship, which contradicts freedom of expression and of the press (A/HRC/20/17, paras. 83-86).[28]

63. The authorities continued to use the crimes of libelling the President and insulting the President against journalists to discourage criticism of government authorities. In June 2013, the correspondent for the Polish newspaper Gazeta Wyborcza and activist of the Polish minority in Belarus, Andrzej Poczobut, was arrested in Grodno and charged with libelling the President for articles published in the Belarusian independent media.[29] In June 2014, criminal charges were brought

[27] OSCE, "OSCE representative calls on Belarusian authorities to repeal accreditation requirements for journalists", 17 June 2014.

[28] Moreover as noted by ARTICLE 19, the practice in many parts of the world is to abuse defamation laws to prevent open public debate and legitimate criticism of wrongdoing by officials. ARTICLE 19, "Defining defamation: principles on freedom of expression and protection of reputation" (London, 2000). Available at www.article19.org/data/files/pdfs/standards/definingdefamation.pdf.

[29] Amnesty International, *Amnesty International report 2013: The State of the World's Human Rights* (London, 2013).

against Ekaterina Sadovskaya for insult to the President of Belarus, after she criticized the unfounded arrest of activists in connection with the Ice Hockey World Championship.[30] In March 2015, criminal charges for libelling the President were brought against a resident of Brest for having decorated the walls of his property with graffiti such as "We built communism, and now we got the crisis" and "There is one way to get around the law — a bribe".[31]

F. Extremism laws

64. The Special Rapporteur on the situation of human rights in Belarus is also concerned that the so-called anti-extremist legislation is used to put pressure on media and journalists. A statement entitled "On counteraction to extremism"[32] contains vague and ambiguous definitions of the terms "extremism" and "extremist materials". In August 2014, the Council of Ministers adopted resolution No. 810, establishing an expert committee to assess information products for signs of extremism. The Special Rapporteur is concerned about the potentially broad interpretations of "extremism" and "extremist materials" both in the text and in the implementation of the resolution, and that the establishment of such a body may lead to more systematic use of this legislation.[33] He furthermore refers to the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression who emphasized that protection of national security or countering terrorism cannot be used to justify restricting the right to freedom of expression unless it can be demonstrated that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence (A/HRC/17/27, para. 73).

65. The closure of Avtoradio also stands as an example of the use of extremism laws. The withdrawal from the register was based on a decision of an administrative court, citing "distribution of call for extremist activities", with reference to the call aired by the presidential candidate Andrei Sannikou during the 2010 presidential elections that "the fate of the country is determined not in a kitchen, but on the square".[34] All attempts of Avtoradio to appeal against the decision were unsuccessful, as the courts in such cases consult only State experts.[35]

66. In April 2013, the Oshmyansky district court ruled that the 2011 edition of the album of photographs published by Belarus Press Photo contained extremist materials that deliberately contorted social, economic and political life in the country. Belarus Press Photo is an independent press photography contest that aims to support, promote and develop local photojournalism.[36] All copies were confiscated and destroyed and the contest organizers and one the finalists were

[30] http://baj.by/sites/default/files/monitoring_pdf/2362014_mass_media_in_belarus_ru.pdf.
[31] http://eurobelarus.info/news/society/2015/03/04/zhitelya-bresta-budut-sudit-za-politicheskiy-blog-na-zabore.html.
[32] http://www.pravo.by/main.aspx?guid=3871&p0=H10700203.
[33] Belarusian Helsinki Committee and other, analytical report covering the period July-September 2014. Available at http://belhelcom.org/sites/default/files/ANALYTICAL%20REPORT%20JULY%20SEPTEMBER.pdf.
[34] Avtoradio Shut Down, *Nasha Niva*, 12 January 2011. Available at: http://nn.by/?c=ar&i=48860.
[35] http://www.rferl.org/content/belarus_radio_opposition_ads_off_air/2274257.html.
[36] http://pressphoto.by/?lang=en.

fined. The experts concluded that the images, such as of sporting events, the President's televised address to the nation, anti-government protests, the picture of a protester injured by police and the daily life of ordinary citizens, violated national anti-extremism legislation and should be banned.[37]

G. Restrictions of freedom of expression on the Internet

67. As of 2012, Internet access in Belarus expanded rapidly. In May 2015, the count of Belarusian Internet users was over 6 million.[38] With increasing restrictions offline, the Internet began to serve as the country's only island of free media.[39]

68. The growth of independent online news sources and the rising popularity of social networks prompted restrictive legal and policy moves by the Government of Belarus.

69. The law on mass media of 2009 included a provision on the right of the authorities to regulate activities of media that are distributed via the Internet (although there is no definition of online media in the law). Presidential decree No. 60 signed in February 2010,[40] as well as some 20 different by-laws and governmental decrees adopted in 2009 and 2010, contained attempts to control and limit the activities of Belarusian websites, including by requiring them to move to the national domain zone and be physically hosted on servers located in the country and by requiring Internet cafés and Internet providers to collect and store data on their customers.

70. The December 2014 amendments to the law on mass media developed a broad framework to systematically restrict freedom of expression online. Prior even to the entry into force of the new legislation, several information website sites were blocked in December 2014 without any reason being given.[41] In March 2015, Charter97, Belaruspartisan and Viasna were blocked and in June 2015 an art and lifestyle website, kyky.org, was blocked for "distributing information that can damage national interests", reportedly because of pieces critical to the church and to the lavish Victory Day parades in Minsk.[42]

71. Several moderators of popular opposition pages and groups on VKontakte were arrested in Minsk and Vitebsk on 30 August 2012, and one of its pages, entitled "We are fed up with Lukashenko", with 40,000 users, was hacked and left inaccessible for two days before its activities were restored. The group

[37] In their conclusion, the experts wrote that the general analysis of photographs and captions demonstrated a deliberately contorted presentation of information and facts, and that the album depicted only negative aspects of Belarusian people's daily activities, which from the point of view of the accepted social norms and good morals also humiliated the national honour and dignity of the citizens of Belarus. See http://naviny.by/rubrics/english/2013/04/05/ic_articles_259_181367 and https://cpj.org/blog/2013/04/archaic-court-ruling-in-belarus-as-photo-book-bann.php.

[38] www.e-belarus.org/news/201506201.html and http://euroradio.fm/en/over-60-belarusians-do-not-listen-radio-50-do-not-read-newspapers.

[39] https://freedomhouse.org/report/freedom-net/2014/belarus.

[40] http://www.pravo.by/main.aspx?guid=3871&p0=P31000060&p2=.

[41] See the following websites: www.belapan.by, www.naviny.by, www.belaruspartisan.org, www.charter97.org, www.udf.by, www.21.by, www.gazetaby.com and www.zautra.by.

[42] http://www.rferl.org/content/belarus-art-lifestyle-website-harming-national-interests/27079737.html.

administrators were charged with minor hooliganism offences and sentenced to five and seven days' detention respectively, and their homes were searched and computer equipment confiscated.[43]

72. In December 2013, several activists were detained in connection with the "Stop Tax" online campaign against a new vehicle tax and commanded to remove it from social networks. After the "Stop Tax" group discussed the possibility of holding a protest on the social network VKontakte, the organizer was sentenced to three days in prison for "organizing and holding a mass event" and the administrator of the "Stop Tax" social network in VKontakte was sentenced to 15 days for alleged "disorderly conduct".[44]

73. In February 2014, the blogger Aleh Zhelnov was prosecuted on charges of resistance to authority for posting audio and video on his blog of potentially illegal police action. Mr. Zhelnov had recorded a reception at the police department and posted this recording on the Internet despite orders from an officer on duty to hand over any recording devices.[45]

74. In January 2014, some 4,000 people signed an online petition calling on the authorities to double the pay and improve the working conditions of emergency medical service providers. While the Government pressured the initiators to withdraw the petition and put one of them on unpaid leave, it also agreed to a pay raise for ambulance workers.[46]

H. Violations of the right to freedom of expression online in the context of freedom of assembly

75. Online media outlets have been increasingly affected by a new trend of applying extra-journalistic laws to online activities. The Special Rapporteur on the situation of human rights in Belarus is concerned that the authorities of Belarus are applying the restrictive rules on assembly to also clamp down on freedom of the media on the Internet. Cases involve handing down fines and sanctions for "online picketing", thereby punishing online campaigns, the communications of groups on social media and online information about rallies and pickets. The regulations applied treat these posts as if they were real events taking place in the municipal space and as if the authors had participated in them physically. In several of these cases, however, the charges do not result from law enforcement action on the spot and all of them were initiated by the authorities days after the posts appeared on the Internet. Therefore these procedures cannot serve as protection of the public order, their only rationale being restricting freedom of expression online.

76. An emblematic case of restricting online freedom using unrelated charges is that of Anton Suriapin, a journalism student, who in 2012 was charged with "assisting an illegal crossing of the Belarusian border". A Swedish public relations

[43] Index on Censorship, "Belarus: pulling the plug", policy paper on digital challenges to freedom of expression in Belarus (January 2013), p.11. Available at www.indexoncensorship.org/wp-content/uploads/2013/01/IDX_Belarus_ENG_WebRes.pdf.

[44] http://charter97.org/en/news/2014/1/3/83079; http://spring96.org/en/news/68119; and http://spring96.org/files/reviews/en/2013_review_en.pdf.

[45] https://www.hrw.org/news/2015/04/13/human-rights-watch-upr-submission-unhrc-belarus.

[46] According to the website of Belapan.

firm had dropped hundreds of teddy bears with parachutes over Belarus, in protest of the lack of media freedom in the country,[47] an incident that is denied by the authorities and the official media. When Suriapin posted photographs of teddy bears that had dropped in a garden on his blog,[48] he was arrested and detained by the security services for over a month.

77. Subsequently, sanctions were meted out for expressing solidarity with Anton Suriapin online. A group of Minsk journalists who posted a photo of a teddy bear in front of a wall on an empty street with the caption "No picture — no troubles?" were accused of having engaged in an illegal demonstration, detained and punished based on article 23.14 of the code of administrative procedures, "Violation of rules of public actions".[49] Change.org, an online petition platform, was blocked in Belarus on 10 August 2012, after it published a call to free Anton Suriapin.

78. Similarly, rules restricting freedom of assembly were applied to several cases of posting photographs in solidarity with Ales Bialiatski, while he was in prison. In two separate incidents in January 2013, fines were handed down to three activists and two Christian Democracy party members for publishing photos of themselves on the web, with a portrait of Ales Bialiatski.[50]

79. Tight restrictions on both freedom of assembly and freedom of expression often result in double violations where authorities see an opportunity to restrict both rights. In the case of Evgeny Pugach v. Belarus the Human Rights Committee found violations of both articles 19/2 and 21 of the Covenant.[51] In August 2009, Evgeny Pugach had sought and was denied permission to hold a peaceful picket in Minsk to draw attention to the problems of homeless animals on grounds that it would hinder the work of an enterprise and automobile traffic. The Committee noted that the refusal amounted to a restriction on the exercise of the author's right to impart information and his freedom of assembly and that the authorities had failed to explain how a picket held in a pedestrian zone, outside the premises of the enterprise, would hinder the work of the enterprise, as well as the movement of traffic. The Committee has in a number of cases on Belarus ruled on violations of both freedom of assembly and expression.[52]

80. On 29 July 2015, police detained Yauhen Hadar and his disabled wife, Aza, who tried to stage a picket in front of a department store in Gomel. The picket was filmed by freelance journalists Kanstantsin Zhukouski and Natallia Kryvashei, who had already repeatedly been detained and fined, and face new sanctions in relation to this incident.[53]

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[47] www.indexoncensorship.org/2012/07/belarus-declares-war-on-teddy-bears/.

[48] http://www.bnp.by/shvedy-dejstvitelno-sbrosili-na-belarus-plyushevyx-medvedej-na-parashyutax.

[49] www.youtube.com/watch?t=12&v=elB-QTH0Ycc and www.charter97.org/ru/news/2012/8/8/56549/.

[50] http://spring96.org/en/news/60928.

[51] Human Rights Committee, communication No. 1984/2010, *Pugach v. Belarus*.

[52] See for example, CCPR/C/110/D/1903/2009; CCPR/C/112/D/1929/2010; CCPR/C/113/D/1949/2010; CCPR/C/112/D/1999/2010 and Corr. 1; CCPR/C/112/D/2029/2011; CCPR/C/101/D/1604/2007; CCPR/C/104/D/1772/2008; CCPR/C/108/D/1948/2010 and Corr. 1; and CCPR/C/108/D/1808/2008.

[53] http://spring96.org/en/news/78832.

I. Harassment and use of administrative arrests, detention for unrelated charges, and violence against journalists

81. The Special Rapporteur expresses concern at the ongoing harassment of journalists in the independent print and Internet media with the use of administrative prosecutions, arbitrary arrests, warnings, criminal convictions including for unrelated charges, and violent law enforcement behaviour in public spaces. The persistent recourse to discriminatory judicial methods amounts to a "disciplinary policy" employed to keep at bay the social need for an independent realm of communication.

82. In 2014, the authorities arbitrarily detained at least 28 independent journalists, including on charges such as hooliganism.[54]

83. In June 2012, European Radio for Belarus correspondent Pavel Sverdlov was arrested in Minsk and sentenced to 15 days in prison on hooliganism charges after he exposed security lapses in the city's mass transit system.[55]

84. On 25 November 2014, Alexander Alessin, a military analyst and economic commentator for the weekly newspaper Belorusy i Rynok was arrested and charged with espionage and treason. He was released from prison on 10 December 2014, but was banned from traveling outside Belarus pending investigation and the charges were reclassified as "communicating with foreign intelligence".[56]

85. No progress has been made in the investigation into the deaths of the journalists Dzmitry Zavadski (disappeared on 7 July 2000), Veranika Charkasava (murdered on 20 October 2004), Vasil Hrodnikau (found dead on 18 October 2005) and Aleh Biabenin (found dead on 3 September 2010). The circumstances of their deaths have never been clarified, nor have any of the perpetrators of these crimes been brought to justice.[57]

86. Lack of physical safety of journalists, and impunity for attacks against them, have an intimidating effect on media freedom in Belarus. The most acute issue is police action and arbitrary detentions during mass street actions. Violence against journalists peaked in the context of repressions surrounding the 2010 presidential elections. On 19 December 2010, 24 journalists on reporting duty were detained and 21 were attacked and injured by riot police.[58] The Belarusian Association of Journalists monitored at least 265 cases of detention of journalists in the period 2011-2013, of which 160 took place in 2011 alone, and at least seven instances of use of physical violence by the police.[59] Many happened during peaceful street actions organized by the Revolution through Social Networks movement.[60]

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[54] www.baj.by/sites/default/files/monitoring_pdf/attacks_against_journalists_and_media_staff-2014.pdf.

[55] https://freedomhouse.org/report/freedom-press/2013/belarus.

[56] http://nn.by/?c=ar&i=140103&lang=ru and https://cpj.org/2014/12/belarusian-journalist-released-from-kgb-jail-banne.php#more.

[57] http://baj.by/sites/default/files/monitoring_pdf/belarus_media_freedom_eng_web.pdf, p.23.

[58] www.baj.by/en/node/8896.

[59] www.baj.by/sites/default/files/monitoring_pdf/attacks_against_journalists_and_media_staff_-_short.pdf.

[60] http://belarusdigest.com/story/civil-society-politics-digest-june-24-july-01-2011.

J. Economic restrictions

87. Insufficient advertisement revenues and the ensuing financial vulnerability of the independent media are a result of discriminatory media governance in Belarus, targeting the editorial independence of existing outlets and reducing pluralism by boosting State media and driving independent outlets out of business.[61] The Belarusian economy is 70 per cent State-owned, through either direct ownership or majority shareholding. Besides granting tax breaks and high subsidies to State-owned media companies, the Government also wields the powerful leverage of its influence over the advertising market. All this creates large discrepancies in business power between State and independent media, with revenues barely sufficient to survive for the latter.[62]

88. Subscription to State-owned newspapers, both national and local, is compulsory for employees of State-owned enterprises and organizations. Printing presses, transmitters, newspaper kiosks and telecommunications infrastructure are also largely State-owned, with no equal treatment provided for independent newspapers. In 2013, 11 independent news publications reported restrictions by the State-run retail press distribution and subscription networks, including by the national postal service.[63]

K. Freedom of information in the context of elections

89. In the lead-up to the 2015 presidential election, the repression ahead of and the repression after the presidential election of 2010 need to be kept in mind. The Special Rapporteur has already had the occasion to document human rights violations in the context of the electoral processes in Belarus and to report thereon to the General Assembly (A/68/276).

90. It should be recalled that since 1994, none of the elections observed by OSCE have been qualified as free and fair, falling short of international standards. For almost two decades, Belarus has been the only country in Europe with only pro-government forces present in parliament. No opposition force has been able to make it to parliamentary representation, whether it participated in elections or decided to boycott them. Repeatedly, violations of the right to freedom of expression have marred elections in Belarus, as showed by the findings of the Special Rapporteur and independent observers with regard to the last two national ballots, the presidential elections in 2010 and the parliamentary elections in 2012 (ibid., paras. 39-48). The Human Rights Committee, in a number of cases brought before it, has found violations of the right to freedom of expression in conjunction with elections.[64]

91. Article 5 of the Constitution stipulates that political parties and other public associations have the right to use the State mass media under the procedure determined by the law. While article 46 of the electoral code stipulates that

[61] www.irex.org/sites/default/files/u105/EE_MSI_2014_Belarus.pdf.

[62] IPM Research Centre, "Business in Belarus 2012: status, trends, perspectives" (Minsk, 2012). Available at http://eng.research.by/webroot/delivery/files/english/sme/business2012e.pdf.

[63] Index on Censorship, "Belarus: time for media reform", p. 7.

[64] See, for example, CCPR/C/105/D/1226/2003, CCPR/C/97/D/1392/2005, CCPR/C/100/D/1354/2005, CCPR/C/95/D/1553/2007, CCPR/C/113/D/1992/2010.

candidates for the position of the President and for the Chamber of Representatives have the right to free appearance on State television and the radio,[65] the OSCE Office for Democratic Institutions and Human Rights observation mission to the presidential elections in 2010 noted that all major television stations with nationwide coverage demonstrated a clear bias in favour of the incumbent, devoting 89 per cent of prime time news coverage to his campaign activities and official duties. Other candidates tended to be mentioned collectively and only rarely individually. They were generally portrayed negatively. Similarly, the four State-funded newspapers monitored by the OSCE election observation mission demonstrated a clear bias in favour of the President.[66]

92. Similarly, in observing the 2012 parliamentary elections, the mission OSCE Office for Democratic Institutions and Human Rights noted more than 30 instances where candidates' free airtime and print space was denied or censored and that, although an electoral campaign was ongoing, State-owned media focused only on procedural aspects of the elections and provided extensive reporting on the President's and the Government's activities.[67]

93. In addition to their limited access to the media, opposition candidates are banned from publicly considering a boycott of an election. The Special Rapporteur has previously raised this issue and deplored that electoral code amendments adopted in November 2013 included provisions for the criminalization of calls for a boycott (A/HRC/26/44, para. 128). The Human Rights Committee held that advocating non-cooperation with an electoral exercise must be allowed for any person.[68] The Special Rapporteur reiterates that in the electoral process anybody has the right to have a critical opinion even about the election itself and to call for the boycott of elections.

94. The right to freedom of expression is elementary for citizens to enjoy the right "to take part in the conduct of public affairs" (International Covenant on Civil and Political Rights, art. 25 (a)), not only by being elected or electors, but also by sharing their opinions on the future of their country. The right to freedom of expression is critical for participation in public affairs; as noted by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, "the exercise of such rights provides avenues through which people can aggregate and voice their concerns and interests and endeavour to fashion governance that responds to their issues" (A/68/299, para. 6).

95. Access to full information is therefore a key part to the process of shaping electoral opinions also outside of campaign periods. Research into the content published by State-owned and independent news media[69] found that the State media coverage of domestic politics was largely dedicated to the statements of the President, while there was almost no mention of the activities of the political opposition, which received significant coverage only in the independent media, together with reporting on human rights issues. It has to be kept in mind that State

[65] http://www.pravo.by/world_of_law/text.asp?RN=hk0000370.

[66] www.osce.org/odihr/elections/75713?download=true.

[67] www.osce.org/odihr/98146?download=true, p. 14.

[68] See Human Rights Committee, communication No. 927/2000, *Svetik v. Belarus*.

[69] www.indexoncensorship.org/2014/02/belarus-distorted-media-market-strangles-independent-voices/.

media have many times more volume and reach compared with the privately owned independent press.

96. The Special Rapporteur on the situation of human rights in Belarus reiterates his concern at the high number of journalists and media workers detained in the context of the presidential elections in 2010 and that several of them reported serious violations of their procedural rights.[70] In 2011, security forces arrested seven members of the Belarusian Association of Journalists, who were convicted of "participating in mass disturbances" and organizing activities that "violated public order" as a result of their work on presidential campaigns in 2010. The number of detentions of journalists also rose in 2012, around the parliamentary elections.

L. Curtailing artistic, cultural and scientific freedom

97. Restrictions on freedom of expression not only affect civil society activists, journalists and human rights defenders, but also Belarusian intellectuals, writers, artists, musicians and actors if they touch upon social, political and cultural issues in their works.

98. An emblematic case of the repression of freedom of artistic expression is the Belarus Free Theatre founded by Natalia Kalyada, Nikalai Khalezin and Vladimir Shcherban in 2005. The theatre, which had never received official authorization to perform, moved to the United Kingdom of Great Britain and Northern Ireland after the arrest of Natalia Kalyada during public protests following the presidential elections in December 2010. Today the members of the theatre continue to write and perform plays on issues crucial for Belarus, including support of political prisoners, rights of journalists and freedom of expression, sexual minorities and societal issues. They have performed in 42 countries around the world and have received top awards. In Belarus the troupe holds performances secretly in private locations, which are regularly raided by the police.

99. The 2013 law on publishing activities in the Republic of Belarus requires publishers to register with the Ministry of Information, and a licence can be denied or withdrawn if the publisher is found to have been "carrying out licensed activities with aims contradicting the interests of the Republic of Belarus".[71] PEN called this "a threat to literary development".[72] These rules not only instil self-censorship in publishers, but also hamper cultural education and the economic growth of the publishing sector.

100. In September 2013, the Ministry of Information revoked the licence of Lohvinau Publishing House, which published the Belarus Press Photo album (see para. 66 above) for "promoting extremism". Following an appeal, the supreme economic court of Belarus upheld this decision in November 2013. Lohvinau was repeatedly denied registration in 2014 on various technicalities,[73] including for not indicating the correct zip code of the publishing house's address in the application

[70] See http://humanrightshouse.org/Articles/15978.html.

[71] www.pravo.by/main.aspx?guid=3871&p0=H11200008&p1=1.

[72] www.pen-international.org/newsitems/international-writers-and-publishers-associations-call-for-reform-of-publishing-law-in-belarus/#sthash.5Whmja3R.dpuf.

[73] http://house.org/report/freedom-press/2015/belarus.

form,[74] and in February 2015 was fined 976 billion Belarusian roubles ($62,150), which amounts to one year's turnover, for selling books without a licence. The fine was paid through the crowdfunding campaign #SaveLohvinau. Since its establishment in 2000, Lohvinau has released around 700 Belarusian and foreign works of literature, history, politics and art. In a letter addressed to the Minister of Information and the Minister of Communication of Belarus in October 2014, PEN International and the other signatories expressed concern that the law on publishing activities "will be used to censor anyone seeking to challenge, criticise or question the Government, and discourages the publication of radical or satirical books".[75]

101. In November 2013, Valery Bulhakau, editor of the Grodno-based monthly cultural magazine *ARCHE*, fled Belarus after months of harassment that included charges of engaging in "illegal business activities" for selling books at a book fair without receipts and an audit by the Department of Financial Investigations that resulted in the freezing of the magazine's bank accounts. *ARCHE* was a monthly journal about Belarusian history, politics, art and literature which had been publishing since 1998 contributions by Belarusians and foreign researchers. State television reported that he had been charged with "distributing extremist literature".[76]

102. In October 2014, a meet-the-author evening in the city of Grodno to promote Viktor Martsinovich's new novel *Mova* was broken up by the police, who burst into the church building where it was being held and called a halt to this "unsanctioned event".[77] In 2009, his first novel, *Paranoia*, was taken off the shelves in Belarus two days after it was published. In April 2015, 20 copies of the philosopher Tatyana Shchitsova's book *Anthropology. Ethics. Politics* and a compilation of articles from the scientific journal *Topos* were seized on the Belarus-Lithuania border.[78]

103. The singer-songwriter Dzimitry Voitsiushkevich, who has been repeatedly blacklisted, was refused authorization for a performance scheduled in July 2015 in the Moscow House in Minsk where the musician intended to present a programme based on poems by Vladimir Mayakovsky. The Ideology Work, Youth and Culture Department of the Minsk City Executive Committee grounded the refusal on presidential order No. 257, chapter 2, paragraph 5, which denies permission for the organization of concerts aiming at war propaganda or extremist activity, threatening national security, public order, morality, and health, civil rights and freedoms of the citizens.[79]

104. Street art is subjected to the same regulations. The urban art community SIGNAL, which made a portrait of the author Vasil Bykau in Minsk in June 2014 to commemorate his birthday, was fined 18 million Belarusian roubles for an "unauthorized artwork" and the painting was removed.[80]

105. Academic freedoms face restrictions from the Government as well. The European Humanities University, founded in Minsk in 1992, was the only

[74] https://spring96.org/en/news/75173.
[75] www.pen-international.org/wp-content/uploads/2014/10/Belarus-Publishing-Law-letterfinal.pdf.
[76] http://belarusdigest.com/story/arche-authorities-against-belarusian-intellectuals-11951.
[77] http://nn.by/?c=ar&i=137611.
[78] http://en.eurobelarus.info/news/society/2015/06/09/blacklists-in-belarus-pulling-the-strings-of-the-entire-cultural.html.
[79] https://spring96.org/en/news/78458.
[80] http://euroradio.fm/en/officials-painting-bykau-ideological-issue.

Belarusian university offering liberal arts education and open to international cooperation in the academic field. In 2004, the President issued a decree to close the university which was subsequently re-established in Vilnius, and is now known as the University of Belarus in Exile, preserving the same academic principles and its Belarusian orientation.[81] Sixty civil society figures of Belarus signed an appeal calling for the creation of a national university in May 2015 after Belarus joined the Bologna Process and the European Higher Education Area. However, reform processes have been slow and the system remains largely unreformed; State ideology is taught as part of the higher education curriculum in Belarus, and in particular coursework related to history, political science and human rights focus primarily on preserving the status quo.[82]

IV. Conclusions and recommendations

106. **The Special Rapporteur notes that his findings show no tangible signs of improvement with regard to the enjoyment of the right to freedom of expression, despite continuous calls for reforms from civil society in the country and the international community. Restrictive, permission-based registration hampers the development of pluralistic and independent news media, supresses freedom of expression online and stunts artistic creativity in the country. This oppressive regulatory environment is further aggravated by the harassment of any media outlet or person seeking to exercise the right to free speech. Taken together with the abundance of restrictions related to the right to be elected, to vote freely, to association, to peaceful assembly, to an effective remedy and to a fair trial and due process, the systemic violations of the right to freedom of expression contribute to creating an environment that denies the exercise of public freedoms or genuine and meaningful electoral processes.**

107. **According to observers, the 2015 presidential elections will be neither free nor fair, in disregard of international standards. They take place against the backdrop of an unchanged pattern of systemic human rights violations, a media landscape unfit for the free exchange of ideas, the absence of an enabling environment for an independent civil society, and the continued presence of political prisoners, all of which seriously undermine the credibility of statements by the Government of Belarus about the pursuit of democracy. The pre-election period was marked by the adoption of even more stringent legislation that establishes even less democratic rules, and by continued violations of the rights to freedom of expression, association and assembly. In its resolution 29/17, the Human Rights Council regretted that Belarus had not yet taken the necessary steps ahead of the presidential election of October 2015 to reform its electoral legislation, and urged Belarus to ensure that the presidential elections are free, fair, inclusive and peaceful.**

108. **The international human rights mechanisms, including the universal periodic review, have made a number of recommendations to Belarus with**

[81] http://en.eurobelarus.info/news/society/2015/06/09/blacklists-in-belarus-pulling-the-strings-of-the-entire-cultural.html.

[82] http://belarusdigest.com/story/belarusian-national-university-path-forward-22917 and http://belarusdigest.com/story/higher-education-belarus-burdened-soviet-traditions-12951.

regard to the right to freedom of expression and its obligations under article 19 of the International Covenant on Civil and Political Rights. The Human Rights Committee has repeatedly found Belarus to be in violation of these rights. The Special Rapporteur reiterates his concern about the systematic dismissal by Belarus of the views of the Committee and its lack of response to those views, which violate the obligations of the State under the Optional Protocol to the International Covenant on Civil and Political Rights. The Special Rapporteur welcomes the adoption by Belarus of the optional reporting procedure of the Human Rights Committee.

109. **The Special Rapporteur reiterates the relevant thematic recommendations of the universal periodic review, treaty bodies and other special procedures, as well as recommendations contained in his own previous reports to the Human Rights Council and the General Assembly. In addition he recommends the following:**

(a) **To conduct a comprehensive review of the legislation of Belarus pertaining to freedom of expression and bring it in line with the relevant international human rights law, by repealing all provisions which unduly restrict freedom of expression;**

(b) **To ensure that the permission-based print media registration procedure is transformed into a simple, transparent and non-discriminatory notification system administered by an independent body;**

(c) **To eliminate the Government's authority to disallow the print press or the online media to start operation, impose sanctions on the media and initiate cases of closure of media outlets based on its judgements of political content;**

(d) **To repeal the use of accreditation laws as a prerequisite to exercising a media profession and ensure that accreditation is not be used to restrict the right to access information for journalists of both online and offline media;**

(e) **To lift the existing ban on cooperation with foreign media without an accreditation and ensure the accreditation of foreign journalists;**

(f) **To secure the right of reporters of both online and offline news media, including freelance journalists, bloggers and citizen journalists, to operate freely, and ensure that none are denied legal protection and access to financial support;**

(g) **To repeal criminal provisions for journalistic errors, including defamation, insult and breach of secrecy, and introduce civil tort ensuring that civil-law penalties for defamation are proportionate to the harm done;**

(h) **To introduce regulation of the use of the Internet in accordance with international freedom of expression standards;**

(i) **To refrain from using vague legislation based on appraisal of "mentality", such as extremism laws, to unduly restrict freedom of expression;**

(j) **In the electoral process, to take special care to avoid interference with public expression of opinions and hindrance of media rights online and offline, including to observe and monitor the electoral process;**

(k) To promote and protect the right to freedom of artistic and academic expression, both online and offline;

(l) To stop harassment by the judicial authorities of privately owned media and journalists covering the work of non-governmental organizations, and refrain from obstructing Internet-based communications of non-governmental organizations and individual human rights defenders;

(m) To ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence and to bring to justice those responsible in order to combat impunity;

(n) To ensure that privately owned and independent publications are treated in a non-discriminatory way by State institutions and services, such as taxing, financial support, advertising, subscription, distribution and technical supplies;

(o) To engage in broad reforms of the Belarusian media sector, acknowledging that the media in a democracy is an endeavour of civil society to pluralistically scrutinize its Government and the level of fulfilment of human and social rights, to accordingly introduce legislation to de-monopolize the electronic media, to introduce public-service media which is made editorially independent, pluralistic and inclusive through internationally entrenched guarantees, and to allow for a competitive media market in consultation with the professional community and civil society of the country.